

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT (HEALTH DEPT. ANIMAL CONTROL DIVISION)  
Public Employer-Respondent,

MERC Case No. C17 G-068

-and-

TEAMSTERS LOCAL 214,  
Labor Organization-Charging Party.

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**APPEARANCES:**

Dwight Thomas, Labor Relations Representative, for Respondent

Joseph M. Valenti, President, Teamsters Local 214 for Charging Party

**DECISION AND ORDER**

On February 7, 2018, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order<sup>1</sup> in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service, and no exceptions have been filed by either of the parties.

**ORDER**

Pursuant to Section 16 of the Act, the Commission adopts the recommended order of the Administrative Law Judge as its final order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/  
Edward D. Callaghan, Commission Chair

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/s/  
Robert S. LaBrant, Commission Member

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/s/  
Natalie P. Yaw, Commission Member

Dated: March 27, 2018

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<sup>1</sup> MAHS Hearing Docket No. 17-015270

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

CITY OF DETROIT (HEALTH DEPT. ANIMAL CONTROL DIVISION)  
Respondent-Public Employer,

Case No. C17 G-068  
Docket No. 17-015270-MERC

-and-

TEAMSTERS LOCAL 214,  
Charging Party-Labor Organization.

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**APPEARANCES:**

Dwight Thomas, Labor Relations Representative, for Respondent

Joseph M. Valenti, President, Teamsters Local 214 for Charging Party

**DECISION AND RECOMMENDED ORDER  
ON MOTION FOR SUMMARY DISPOSITION**

On July 24, 2017, Teamsters Local 214 filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against the City of Detroit pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Pursuant to Section 16 of the Act, the charge was assigned to Julia C. Stern, Administrative Law Judge with the Michigan Administrative Hearing System.

On August 3, 2017, I scheduled a hearing on the charge and directed Respondent to file a position statement. Respondent did not file the position statement as directed. However, it requested, and Charging Party agreed to, an adjournment of the hearing. On the day of the rescheduled hearing, Respondent's representative was ill, and the hearing was converted to a telephone conference. After the conference, on November 1, 2017, I issued an order to Respondent, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS; 2014 AACS, R 423.165, to show cause why an order should not be issued finding Respondent to have repudiated Article 5(B) of the parties' supplemental collective bargaining agreement. On November 22, 2017, Respondent filed a response to my order. On November 28, 2017, I notified the parties by letter that I would treat Respondent's response as a motion for summary disposition. On December 18, 2017, Charging Party filed a response in opposition to the motion.

Based on undisputed facts as set forth in the charge and pleadings and repeated in the fact section below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Charging Party represents a bargaining unit of employees which includes Animal Control Officers and Animal Care Technicians in the Animal Control Division of Respondent's Department of Health. Charging Party and Respondent are parties to both a master collective bargaining agreement which covers all Respondent's employees represented by Charging Party and a supplemental collective bargaining agreement for employees in the Animal Control Division. The supplemental agreement covers the term December 2, 2013, through December 31, 2018. Charging Party alleges that Respondent repudiated Article 5(B) of the supplemental agreement, and its duty to bargain in good faith under Section 10(1)(e) of PERA, by refusing to allow members of its bargaining unit to select their job assignments by seniority.

Facts:

Article 5, Sections A and B of the supplemental agreement read as follows:

- A. Insofar as it does not adversely affect the operations of the Department, Animal Control Officers will be allowed to exercise their classification seniority in the selection and shift preference [sic]. However, it is understood that the Department may make changes in work assignments in cases of unforeseen circumstances, such as a lack of required personnel and in other cases, when the change in assignments may result in a more efficient operation.
- B. Bargaining unit employees, at the Animal Control Center, will be permitted to bid on their jobs beginning the second Monday in June and ending the third Monday in June of each year. Posting of the schedule will be made between the third and fourth Monday in June and will be effective July 1<sup>st</sup> of each year. All employees, upon filing their job preference will remain on such assignments for a period of one (1) year, except [sic] as provided herein.

In addition, Article 3 of the master agreement, the management rights clause, includes the following language:

- C. The City shall have the right and obligation to determine and establish the policies, goals and scope of its operations. *Consistent with this right the City has the right to determine and implement reasonable work schedules/shifts, vacation schedules, and flex time and to establish the goals, methods and processes by which such work is performed and the qualification of employees assigned to do the work, provided they do not conflict with the terms of this Agreement.* These rights and obligation include, but are not limited to:

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5. *Establish qualifications and methods for hire, transfer, assignment and promotion in employment.*

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17. *Determine and implement such other actions deemed appropriate to achieve the City's goals and objectives.* [Emphasis added]

Article 46 of the master agreement states that to the extent that any provision of the master agreement conflicts with a provision in the supplemental agreement, the master agreement shall prevail.

Historically, there have been four distinct job assignments within the Animal Control Officer classification. One of these assignments, mobile officer, involves primarily outside work. Animal Control Officers with the other three assignments, including dispatcher, work primarily inside the building. Prior to June 2017, Animal Control Officers bid, in the annual job bid, on a combined job assignment and a shift. That is, dispatcher - 1<sup>st</sup> shift was an assignment available for bid, dispatcher - 2<sup>nd</sup> shift was another, a third assignment was mobile officer- 1<sup>st</sup> shift, etc. Animal Control officers exercised their seniority to select a job assignment and shift and retained that job assignment and shift from July 1 until July 1 of the following year.

In May 2017, Melissa Miller, the head of the Animal Control Division, issued a new Animal Control Officer scheduling policy. The policy listed eight separate Animal Control duties, and stated that all Animal Control Officers would be rotated through these duties. The policy stated that this was to “ensure core competency in all responsibilities of Animal Control Officers, increase situational awareness and safety measures, and *prevent preferential treatment outside of standards set in the Teamsters 214 Master Agreement and Supplemental Agreement.*” [Emphasis added.] The policy went on to state that assignment to field teams would be on a rotating basis to ensure equal time in the field for all officers, and that every attempt would be made to schedule each Animal Control Officer for same amount of field hours each week. The policy also stated that Animal Control Officers assigned to inside responsibilities could be asked at any time to supplement a field response, at the discretion of a supervisor.

On May 26, 2017, Charging Party wrote a letter to the Director of the Labor Relations Division of Respondent's Human Resources Office asserting that the new Animal Control Officers scheduling policy was contrary to the language of the supplemental agreement. Charging Party requested that the policy not be put into effect until the parties had a chance to meet, and, if necessary, negotiate new contract language.

In early June 2017, the Animal Control Division posted a schedule which allowed Animal Control Officers to bid on a shift, but not on a job assignment. Charging Party objected and requested a special conference under the contract. The parties met on June 14, 2017. During this conference, Respondent told Charging Party that its intention was to have each Animal Control Officer rotate through each of the four job assignments during the course of the year to ensure that every Animal Control Officer remained adequately trained in each assignment. It also told Charging Party that it believed that it had the right under the contract language to make this change.

The schedule remained as originally posted. Animal Control Officers bid on shifts only, and a new schedule went into effect on July 1, 2017. On July 3, 2017, Charging Party filed a grievance asserting that Respondent had violated Article 5 by refusing to allow Animal Control Officers to choose both their shift and their assignment by seniority. At the time the charge was filed, the grievance remained pending at the first step of the grievance procedure.

#### Discussion and Conclusions of Law:

If the term or condition of employment is “covered by” a provision in a current collective bargaining agreement, and the parties have agreed to a grievance resolution procedure ending in binding arbitration, the details and enforceability of the provision are generally left to arbitration. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich 309, 317-321 (1996). As the Commission stated in *St Clair Co Rd Comm*, 1992 MERC Labor Op 533, 538:

Where there is a contract covering the subject matter of a dispute, which has provisions reasonably relied on for the action in question, and the contract also has a grievance procedure with final and binding arbitration, the Commission finds that the contract controls and no PERA issue is presented.

Doubt about whether a subject matter is covered should be resolved in favor of having the parties arbitrate the dispute. *Macomb Co v AFSCME Council 25, Locals 411 and 893* 494 Mich. 65, 82 (2013)

However, the Commission has held that a party’s repudiation of a provision or provisions of its collective bargaining agreement may be tantamount to a rejection of its duty to bargain. The Commission has defined “repudiation” as an attempt to rewrite the parties’ contract, a refusal to acknowledge its existence, or a complete disregard for the contract as written. *36<sup>th</sup> District Court*, 21 MPER 19 (2008) *Central Michigan Univ*, 1997 MERC Lab Op 501; *Redford Twp Bd of Ed*, 1992 MERC Lab Op 894. For the Commission to find an unlawful repudiation the contract breach must be substantial and have a significant impact on the bargaining unit, and there must be no bona fide dispute over interpretation of the contract language. *Plymouth-Canton Cmty Schs*, 1984 MERC Lab Op 894, 897.

Here, Respondent argues that Article 5(A) of the supplemental agreement gives the Animal Control Division the right to make changes in the work assignments of Animal Control Officers when these changes result in a more efficient operation. Respondent asserts that rotating job duties among the Animal Control Officers, rather than letting them bid on and keep the same assignments for a year, improved the efficiency of the Division. Therefore, according to Respondent, it had the right under Article 5(A) to make the change. Respondent also relies on the italicized language from the master agreement above. Respondent argues that its actions did not amount to repudiation of the contract, and that the charge should be dismissed.

Charging Party asserts that Article 5, Sections A and B of the supplemental agreement clearly and unambiguously mandate that Animal Control Officers be allowed to bid on job assignments by seniority. It disputes Respondent’s interpretation of Article 5(A). It argues that Respondent failed to show that permitting Animal Control Officers to select their job assignments by seniority had an adverse effect on the operations of the Division. It also argues that Respondent has failed to show

any “unforeseen circumstances that may result in more efficient operations.” In addition, Charging Party points out that Article 3 of the master agreement states that the management rights set out in that provision apply only when they do not conflict with other terms of the collective bargaining agreement. Charging Party asserts that the Commission should find Respondent’s repudiation of the collective bargaining agreement to be an unfair labor practice.

In this case, bidding by seniority on jobs by the Animal Control Officers is clearly “covered by” the parties’ collective bargaining agreement. I also find that the parties have a bona fide dispute over whether Articles 5(A) and (B), read together, prohibited Respondent from eliminating bidding on assignments under the circumstances of this case. I conclude that Respondent did not repudiate, as the Commission defines that term, the parties’ contract, and that the parties’ dispute over interpretation of the contract should be resolved by an arbitrator and not by the Commission. I recommend, therefore, that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: February 7, 2018